

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE No. 2014090284

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS

On September 2, 2014, attorney Kathleen M. Loyer, on behalf of Student, filed with Office of Administrative Hearings a due process hearing request (complaint) against Pacentia-Yorba Linda Unified School District. On September 15, 2014, attorney Jennifer Fant, on behalf of Pacientia-Yorba, filed a motion to dismiss Student's claims under Section 504 of the Rehabilitation Act and Section 1983 of title 42 United States Code. OAH received no response from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of title 42 United States Code.

DISCUSSION

In the present matter, Student's complaint alleges, under Section 504, Section 1983, and IDEA, that from September 2012 to the present, Pacentia-Yorba denied Student a FAPE by failing to develop and implement "comprehensive" individualized education programs to address all of Student's needs within the least restrictive environment. The complaint specifically alleges that Pacentia-Yorba denied Student a FAPE by failing to provide student with appropriate services regarding speech and language (fluency and social skills), academic tutoring, and psychological services.

Student's complaint concedes that OAH does not have jurisdiction to hear Section 504 and Section 1983 claims, none the less, Student has pled those allegations in his complaint. As OAH does not have jurisdiction to hear Student's claims regarding alleged violations of Section 504 and Section 1983, those claims are dismissed.

ORDER

1. Student's allegations that Pacentia-Yorba violated Section 504 of the Rehabilitation Act and Section 1983 of title 42 United States Code, are dismissed. The allegations, in which Student alleges Pacentia-Yorba denied him FAPE under IDEA, are not dismissed and the matter shall proceed as to those issues.

2. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

DATE: October 1, 2014

/s/

ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings